



Workers' Compensation and Disability Retirement within the CHP

Mid-year Progress Report

January through June, 2006

In September 2004, media attention was thrust upon the California Highway Patrol (CHP) and its involvement with rising workers' compensation costs. Specifically, articles focused on industrial disability retirement and the use, and possible abuse, of this benefit by CHP upper management and subordinate uniformed ranks. Upon his appointment as new CHP Commissioner, Commissioner M. L. Brown promised Governor Schwarzenegger to conduct a thorough review of the Department's workers' compensation and disability retirement programs. Contained in the resulting report to the Governor were a total of 21 recommendations designed to help curb rising workers' compensation costs and help prevent fraud and abuse of these vital employee benefits. This is a recurring progress report that will highlight the activities completed toward the implementation of each of the report's recommendations.

General Accomplishments

- The Workers' Compensation Fraud Investigation Unit (WCFIU) continues to investigate potential workers' compensation fraud in all ranks and classifications, including high ranking managers. Fifty percent of the Unit's investigators continue to be assigned to the District Attorney's office for the primary purpose of investigating high ranking CHP managers.
- On February 9, 2006, an officer that was arrested in January 2005, and subsequently convicted of seven counts of workers' compensation fraud in December 2005, was sentenced by the court. The officer was sentenced to 365 days in county jail and was ordered to pay restitution to the CHP in the amount of \$79,146.00.
- The WCFIU's toll-free tipline and internet website continue to provide tips/leads for future potential fraud investigations. The WCFIU received 30 tips/leads during 2006. Of those tips/leads, seven have been investigated and closed, after determining no fraud existed. Three cases were opened and are currently being investigated, and three cases are in the preliminary stage to determine if further investigation is warranted. Other cases that were received in 2004 and 2005 were also closed after determining no fraud existed while other cases received in 2004 and 2005 continue to be investigated.
- The WCFIU developed and provided training to First Line Supervisors, Middle Managers, and Division Area Commanders. Training concentrated on personal accountability and responsibility concerning workers' compensation and injury and illness case management.

- The WCFIU has continued to receive the names of all departmental employees who submit an application for disability retirement. A preliminary review of those applications is conducted for the purpose of screening for potential workers' compensation fraud. If no indication of potential fraud exists, no further action is taken. However, if indications of potential fraud exist, further investigation is conducted by the WCFIU.
- The administrative appeal of the May 2005 dismissal of a CHP public safety dispatcher was completed during the second quarter of 2006, and the Department is awaiting the decision from the Administrative Law Judge. The Shasta County District Attorney's office is continuing to compile information to assist in the filing of criminal charges.
- Since January 2005, six CHP chiefs have retired. They all service-retired; none applied for an industrial disability retirement.
- During the 2004/05 fiscal year, the Department of Personnel Administration's (DPA) figures show an over 4 percent reduction in workers' compensation costs compared to the 2003/04 fiscal year (from \$67.8 million to \$64.9 million).
- According to the State Compensation Insurance Fund (SCIF), there was a 21.4 percent reduction in the number of new workers' compensation claims filed compared to the same period in 2004 (from 1,230 to 967). This does not include any cases that have been reopened.

In the following paragraphs, each recommendation is taken verbatim from the CHP's report to the Governor, followed by the activity completed during the months of January through June, 2006.

Internal Actions

1. **"Limited Duty Assignments. The use of limited duty assignments (with an appropriate medical release) for specified employees pending industrial disability retirement (IDR) is being reviewed for possible expansion. Often employees file for IDR while on paid medical leave (4800.5 time).¹ Bringing these employees back to work and placing them on limited duty status would stop their entitlement to 4800.5 benefits, thereby reducing departmental costs for tax free disability payments. Then, once the employee's IDR is approved by CalPERS, the employee could be separated from the organization, bringing about additional savings to the Department in reduced 4800.5 benefit costs. We would also explore and implement a policy to articulate which assignments employees on limited duty could perform."**

Status: Pending review by Executive Management.

¹ This refers to California Labor Code Section 4800.5, which provides full salary, tax free, for up to one year to CHP uniformed employees who are *temporarily* disabled as a result of an industrial injury.

Activity this Period

A final revised version of HPM 10.7, *Injury and Illness Case Management Manual*, Chapter 8, *Limited-Duty/Return-To-Work Policy*, is currently being reviewed by Executive Management for approval. The focus of HPM 10.7, Chapter 8, is to clarify departmental policy on limited duty assignments. It is the goal of the Department to offer limited duty to EVERY employee who is injured and unable to return to full duty while recovering from their injury. It is hoped that with an increased use of limited duty, employees will be able to provide some work functions to an Area while reducing the Department's 4800.5 costs. This chapter revision also provides commands with examples of limited duty assignments and makes changes to the CHP 443, Approval of Limited Duty Assignment, process.

2. **“Internal Approval Authority. The Department is evaluating its internal authority process for the settlement of workers’ compensation claims. This lengthy internal process can cause problems with meeting the ten-business day approval requirement imposed by the State’s Master Agreement.”**

Status: Implemented.

Activity this Period

On February 16, 2005, an issue paper was submitted to Assistant Commissioner (AC), Staff with suggested revisions to the current settlement authority approval process. The issue paper recommended that all requests for stipulated awards be approved by Disability and Retirement Section (DRS). Prior policy was that DRS had authority to approve settlements up to 49.75 percent permanent disability, Personnel Management Division (PMD) had authority to approve settlements up to 69.75 percent permanent disability, and settlements above 70 percent permanent disability required approval by AC Staff. On March 3, 2005, AC Staff partially approved the recommendation and provided PMD with authority to settle claims up to 100 percent permanent disability.

3. **“Policy Compliance. Emphasis has begun, and will continue, for strict compliance and enforcement of departmental policies relative to completion of required injury documentation, and specifically the CHP 121D, Injury/Illness Status Report form. Further, existing policy is being revised to require monthly reporting of injury status by commanders of their employees, inclusive of months when no employee is on injury status, otherwise known as *negative reports*.”**

Status: Implemented.

Activity this Period

A revision to HPM 10.7, *Injury and Illness Case Management Manual*, Chapter 2, *Case Management*, was submitted to, and approved by, AC Staff. To help increase accountability on the part of commanders and their responsibility for proper case management, the revision requires the submission of negative reports along with any pertinent updates to current cases.

4. **“Consistent and Timely Division Review of Area Case Management Practices.** The Commissioner’s Office currently provides “Quarterly Reports of Open Workers’ Claims” to each Division commander for their respective commands. The Department will now provide these reports on a monthly basis to improve management review and follow-up. Further, a standard Division review protocol is being developed to ensure that local commands use their report to actively review injury claims on a monthly basis. Finally, this new process will include a comparison between the CHP 121D and the new monthly report of open injury claims to ensure compliance with case management policies.”

Status: Implemented.

Activity this Period

On March 30, 2005, DRS submitted a revision to HPM 10.7, *Injury and Illness Case Management Manual*, Chapter 2, *Case Management*, to AC Staff. DRS also provided a written request for an automated report system to Information Management Division (IMD) on April 18, 2005. This report requested IMD to develop an automated system to generate a “Monthly Report of Open Workers’ Claims.” This program became functional July 1, 2006. The appropriate manual revision is completed and awaiting final approval based on IMD’s ability to generate the monthly report as requested. The manual revision will provide direction to Divisions on their responsibility to provide and ongoing review of each command’s case management.

5. **“Legal Counsel Position.** The Department will explore the feasibility of a budget change proposal (BCP) seeking a legal counsel position, designated as an expert in, and solely dedicated to, departmental cases related to workers’ compensation, retirement, recruitment, and equal opportunity. Such a position would provide immediate access to, and timely review of workers’ compensation matters that may be outside the technical expertise of current DRS staff.”

Status: The Department is currently in the hiring phase for the legal counsel position.

Activity this Period

In September 2005, a BCP for this position and six additional support positions was submitted to the Department of Finance (DOF) and ultimately included in the Governor's Budget for fiscal year 2006/07. The six positions were approved by the Legislature in June 2006.

DRS has hired a Staff Services Manager I, and has made a conditional hire for one Associate Governmental Program Analyst (AGPA). DRS is currently in the hiring process for the attorney (panel list is expected in the next two-three weeks), three AGPA's (positions posted prior to Post and Bid Process, interviews have been scheduled and will now be reposted under the Post and Bid Process), and one Office Assistant (same as the AGPA, posted prior to Post and Bid process, now will be reposted under the Post and Bid Process).

6. **"DRS Database. A modified DRS database must be developed to include additional statistical information about workers' compensation claims and IDRs. Such a database should be easily navigable and include information which could serve as indicators of potential fraud. The database recently developed by the workers' compensation audit task force will be used as a starting point in the development of this new database. Information contained in these files will also be accessible to field commands upon request."**

Status: Implemented.

Activity this Period

DRS met with IMD throughout the first six months of 2006. DRS participated in user acceptance evaluations on June 20, 2006. On June 22, 2006, DRS provided final approval for this project. The database for monthly open case reports was made functional as of June 30, 2006. DRS will be able to provide commands with the first monthly reports beginning August 2006.

7. **"Workers' Compensation Fraud Investigation Unit Database. A more expansive, confidential database should also be created for the exclusive use of the WCFIU. This database will be utilized to conduct trend analyses, and to track fraud investigation cases from initial investigation to prosecution and/or adverse action."**

Status: Implemented.

Activity this Period

A database was developed by IMD for the sole use of the WCFIU. After lengthy development and testing, the database became operational in October 2005, and is currently being utilized by WCFIU. The database allows WCFIU to track workers' compensation fraud investigations from the initial tip/lead to the conclusion of the case. It also allows for complex trend analysis using a variety of search criteria, such as rank, command, Division, how the tip/lead was received, tenure of the employee, age of employee, type of injury, and other criteria, as well as any combination of search criteria.

8. **"Policy. Policy will be developed to provide further guidance for processing of "questionable" injury claims. Specifically, a policy will be provided on handling of claims that appear to be fraudulent."**

Status: Pending review by Executive Management.

Activity this Period

During this period, a separate chapter containing policy on workers' compensation fraud was drafted for inclusion in HPM 10.7, *Injury and Illness Case Management Manual*. The draft policy provides information on what constitutes fraud and includes indicators of possible fraud or abuse for use by command personnel. It also provides procedures for commanders to follow should any indicators of fraud be present. The policy has been completed by the Office of Primary Interest (OPI), and is now in the departmental review process.

9. **"Tipline/Website. The Department will explore the feasibility of establishing a toll-free workers' compensation fraud reporting hotline for suspected criminal activity by workers' compensation claimants and/or disability retirees. The website could be utilized by both departmental employees and the public."**

Status: Implemented.

Activity this Period

Both the toll-free tipline and the fraud-reporting website were initiated at the end of 2004.

10. **"14 Critical Tasks. The Department will re-evaluate the 14 critical tasks (otherwise known as *performance measures*) required of all uniformed employees and make recommendations to the Commissioner as appropriate."**

Status: The 14 Critical Tasks survey is currently being reviewed by Dr. Wendy Wilson, and PMD staff. It is anticipated that the recommendations will be implemented by August 2006.

Activity this Period

During this period, consultants from Cooperative Personnel Services conducted on-site visits and interviews at specific geographical locations throughout the state. As a result of these visits/interviews, a survey was developed which was finalized and distributed to a representative random sample of officers and sergeants in early 2006. Results of this survey will be utilized when reviewing the 14 critical tasks.

- 11. “Self Administration. The Department will explore the feasibility of administering its own workers’ compensation claims, or replacing SCIF with a private insurer. Such an evaluation will explore means of reducing current multi-million dollar annual costs for open injury claims. This recommendation would follow an assessment of recently enacted workers’ compensation law. The threshold for this evaluation will be what is in the best interest of the state and taxpayers who fund workers’ compensation costs. If this proposal is adopted, additional in-house legal counsel would be required.”**

Status: Implemented.

Activity this Period

DRS has had several meetings and correspondence with Executive Management on the direction of this recommendation. SCIF and the CHP have developed another option to this issue. While remaining under the Master Agreement, SCIF will consolidate all of the CHP claims into their Sacramento office. Additionally, due to recommendations in an independent audit of SCIF, SCIF will reduce the size of their adjuster’s caseloads to an average of 150 claims per adjuster.

Since the beginning of 2006, SCIF has completed work on its adjusting facility in Sacramento, and claims have been transferred from their Oxnard and Commerce locations. It is expected that remaining cases will be transferred throughout the third quarter of 2006.

- 12. “Occupational Safety. The Department will task its Occupational Safety Committee to explore and recommend new workplace safety programs with a goal of substantially reducing injuries to employees and reducing associated costs.”**

Status: Implemented.

Activity this Period

The Department’s Occupational Safety Unit (OSU) has compiled a list of 822 employee safety recommendations. The recommendations were reviewed by the Departmental Occupational Safety Board (DOSB) and condensed for a presentation to

Top Management. The recommendations were dispersed to each respective OPI for evaluation and follow-up.

OSU is currently providing training to all departmental personnel regarding ergonomics. The ergonomic policy was approved by DOSB last year, and is currently in the process of being updated into HPM 10.6, Occupational Safety Manual, Chapter 11, Ergonomics Policy. OSU has also completed the departmental Motorcycle Program Audit and will provide an Executive Management briefing in August 2006, and a Top Management presentation in September 2006.

13. **“Departmental Awareness Campaign. An in-house awareness campaign will be developed which emphasizes integrity and honesty relative to injury and workers’ compensation claims. Awareness tools will include a means to express departmental values and expectations of employees with respect to this subject, the positive aspects of service retirement, the importance of proper case management, training of all employees, and wide dissemination of any departmental employee fraud cases.”**

Status: Implemented.

Activity this Period

The WCFIU developed additional training blocks for existing departmental courses which cover issues in this recommendation for presentation to supervisors, managers, and commanders. Training topics covered during these instruction blocks include the following:

- Positive aspects of a service retirement.
- Importance of proper case management.
- Workers compensation fraud training to employees.
- Information dissemination of departmental fraud cases.

These program elements were also featured during the March 2006 All Commanders Leadership Conference and are part of a continuing dialog with representatives from the California Association of Highway Patrolmen.

The WCFIU prepared quarterly segments for the Department’s Solid Realistic Ongoing Verifiable Training (SROVT) program which will be disseminated throughout the state. SROVT is a situation-based training forum in which officers are faced with a realistic scenario or situation that may rarely be encountered, but which can have significant or dramatic personal and departmental impacts if handled incorrectly or poorly. Officers are tasked with working through the situation based on knowledge of departmental policy, procedures, previous training, and possibly character and integrity. Topics of

these SROVTs address workers compensation fraud indicators, proper case management, departmental policy, and employee values and expectations regarding compensation claims.

- 14. “Reclassifying Injured Employees. The Department is exploring the feasibility of reclassifying the duty position of permanently injured uniformed employees, with the intent of returning the employee to duty in a vacant non-peace officer role.”**

Status: Implemented.

Activity this Period

A new chapter to HPM 10.7, *Injury and Illness Case Management Manual*, Chapter 13, “*Wellness Program*” was developed. This chapter adds policy to assist commands in the proper use of the options letter currently used to notify employees who are unable to return to their usual and customary position, and of their employment and benefit options.

- 15. “Special Handling of Retirements. The Department is developing policy to make clear that an employee’s retirement eligibility shall not be considered when an adverse action, or separation due to injury, is being considered by the Department.”**

Status: Implemented.

Activity this Period

In February 2005, the CHP’s Internal Affairs Section (IAS) revised HPM 10.2, *Internal Investigations Manual*, to reflect that disciplinary action would not be based on retirement eligibility.

- 16. “Amendment to HPM 10.2, *Internal Investigations*. Under the Public Safety Officers’ Procedural Bill of Rights (POBR), the Department generally has one year to take final administrative action against a uniformed employee for acts of misconduct. The Government Code (GC) provides specified exceptions to this one-year period for complex investigations, workers’ compensation fraud, and other criminal cases. For example, it extends the period to take adverse action against an employee to within three years of learning of the misconduct. The practical effect of the time limit is that the Department will likely be precluded from taking adverse action against an employee who retires before adverse action is taken, then reinstates several years later after the statute of limitations passes relative to *final administrative action*. Although this happens infrequently, it nevertheless is a loophole in the system.”**

Status: Implemented.

Activity this Period

In February 2005, IAS revised HPM 10.2, *Internal Investigations Manual*, to reflect that disciplinary action would not be based on retirement eligibility. Additionally, research established that a State Personnel Board precedent-setting decision granted jurisdictional rights of the employer to dismiss an employee who has separated as the result of a disability retirement. IAS has determined that this revision addresses the concerns raised by this recommendation. Therefore, no further policy revisions are necessary.

External Actions

1. **“Amend Labor Code 4658.6. Amend Labor Code Section 4658.6 to incorporate language specifying that injured employees who are eligible for maximum service retirement and opt to disability retire are not entitled to additional benefits other than medical costs related to the injury/disability.” (This recommendation is specific to CHP IDRs and was part of the CHP’s recommended legislative changes in March 1996.) (Revised February 2005.)**

Status: Completed.

Activity this Period

On February 18, 2005, Assembly Bill (AB) 804 was introduced. AB 804, sponsored by the Department, amended Section 4658.6 of the Labor Code to provide that an employer shall not be liable for the supplemental job displacement benefit if the employee is a peace officer with the Department and is eligible for the maximum service retirement benefit under Section 21362, 21362.2, or 21362.3 of the GC.

During the 2005 legislative year, AB 804 moved through and was passed by the Assembly. In the Senate, the bill was opposed by the Consumer Attorney’s, Applicant Attorney’s, and the Professional Firefighters Association. Due to the opposition, the Department was unable to gain enough support to get the bill through policy committees in the Senate. As a result of the failure, the legislative recommendations made in the report will not be implemented.

2. **“Earnings Offset. Establish an earnings offset for IDR retirees employed outside CalPERS in an occupation requiring peace officer status, by restricting combined earnings (disability retirement plus outside earnings) to no more than the employee’s salary level upon retirement (similar to GC Section 21300).” (This recommendation is specific to the CHP and was part of the CHP’s recommended legislative changes in March 1996.)**

Status: Completed.

Activity this Period

This recommendation was addressed through AB 804, LaSuer. The bill added GC Section 21431 which would apply to a person who has become eligible for a maximum service retirement benefit. If the person takes an industrial disability benefit and subsequently becomes employed as a peace officer, the industrial disability retirement would be converted to a service retirement.

During the 2005 legislative year, AB 804 moved through and was passed by the Assembly. In the Senate, the bill was opposed by the Consumer Attorney's, Applicant Attorney's, and the Professional Firefighters Association. Due to the opposition, the Department was unable to gain enough support to get the bill through policy committees in the Senate. As a result of the failure, the legislative recommendations made in the report will not be implemented.

3. **"Presumptive Injuries. There must be a review of Labor Code Sections 3212 through 3213 to determine if the current list of presumptive injuries is tied to specific job-related injuries. An employee should not, for example, automatically qualify for a *presumption based* IDR if the medical review determines that the particular injury was unrelated to the employee's specific job duties."** (This recommendation is specific to the CHP.)

Status: Pending, due to Office of Special Representative (OSR) August 1, 2006.

Activity this Period

On October 6, 2005, PMD and DRS met with Executive Management to discuss the recommendations contained in the issue paper submitted in June 2005. Based upon this meeting, it was decided to revise the recommendation of the issue paper to focus on introducing legislation to require the legislature to review presumptive injuries. The revised issue paper was submitted to AC Staff on October 17, 2005, and further revised on March 24, 2006. AC Staff has provided direction to DRS to work with the OSR to draft proposed legislation.

Based on recommendations provided to AC Staff in a recent issue paper, DRS is working with OSR to develop a legislative resolution to have the Legislature initiate a study to review presumptive injuries. The purpose of this study will be to determine if there are actual links between presumptive injuries and employment. A draft of this legislative proposal is due to OSR on August 1, 2006.

4. **“Medical Evaluations.** With respect to CalPERS, after an IDR is approved, CalPERS has the responsibility to periodically review the current status of retirees. To accomplish this, CalPERS should periodically have independent medical evaluators re-evaluate, in a standardized format, the disability status of employees who are less than 50 years of age, which is the CHP’s eligibility age for service retirement. This could initially be done on a trial basis to determine if this process is beneficial in identifying disability retired employees whose medical status later improves to the point that they may be able to return to their CHP employment.”

Status: Completed.

Activity this Period

This issue was addressed by legislation introduced by CalPERS. As introduced, SB 105 would revise this provision to make it applicable to any recipient of a disability retirement allowance who is less than 59 years of age. It would also provide that if a recipient of a disability retirement allowance who is over the minimum age for voluntary retirement for service applicable to members of his or her class, and who has been receiving a retirement allowance for less than 36 months, refuses to submit to a medical examination, the pension portions of his or her allowance may be discontinued until the withdrawal of the refusal.

The bill passed the Senate without a dissenting vote and made it to the consent calendar in the Assembly. On September 8, 2005, it was placed on the inactive file.

5. **“Amend Penal Code Section 1543(d):** Penal Code Section 1543(d) should be amended to grant the CHP access to relevant medical records associated with workers’ compensation and disability retirement cases that both SCIF and CalPERS have access to.” *(Revised February 2005.)*

Status: Completed.

Activity this Period

This recommendation was addressed by AB 804, LaSuer. Under the bill, Section 1543 was to be amended to allow the CHP to access medical records for the purpose of conducting workers’ compensation investigations.

During the 2005 legislative year, AB 804 moved through and was passed by the Assembly. In the Senate, the bill was opposed by the Consumer Attorney’s, Applicant Attorney’s, and the Professional Firefighters Association. Due to the opposition, the Department was unable to gain enough support to get the bill through policy committees in the Senate. As a result of the failure, the legislative recommendations made in the report will not be implemented.